

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD**

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CVS,	)	
PETITIONER,	)	Case No. 13-UC-266228
And	)	
	)	
TEAMSTERS LOCAL 727	)	
RESPONDENT.	)	
	)	

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**INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 727’S OPPOSITION  
TO THE COMPANY’S REQUEST FOR SPECIAL LEAVE TO FILE A REPLY AND  
REQUEST FOR RECONSIDERATION**

On November 23, 2020, CVS filed with the Board a request for special leave to file a reply in response to the Union’s Statement in Opposition of CVS’s Request For Review filed on November 10, 2020. On November 24, 2020, the Board granted CVS’s (“the Company’s”) request and forwarded its Reply to the Board for consideration. For the reasons stated herein, the Union respectfully requests that the Board reconsider its ruling, deny the Company’s Request, and disregard the Company’s Reply.

First and foremost, the Union strongly objects to any consideration given by the Board to the Company’s Reply (attached as Exhibit 1 to its request) in rendering its decision to grant leave to the Company. Sections 102.67(f) and 102.71(d) of the Board’s Rules and Regulations specifically states that, “no reply *may be filed*” absent special leave from the Board. 29 C.F.R. § 102.67 & 102.71 (emphasis added). Accordingly, parties, like CVS, are clearly prohibited from filing a reply absent leave to do so by the Board. *Id.*

Here, the Company inappropriately, and in violation of Sections 102.67(f) and 102.71(d) of the Board’s Rules and Regulations, filed its Reply simultaneously with in its Request to the Board *prior to* being granted leave to do so. The Company likely did this intentionally, knowing that it was a clear violation of the Board’s Rules and Regulations, hoping that the Company’s

Reply would be read prior to granting the leave. This is precisely what occurred. Rather than rejecting the inappropriate filing, the Board not only granted leave but reviewed the Company's Reply in making its decision. See, paragraph 3 of the Board's grant of leave addressed to CVS. By ruling in this abrupt fashion, and no more than 24 hours after the Company had filed its Request, the Union suffered substantial prejudice. In fact, the Union was given no opportunity, whatsoever, to respond to the Company's Request prior to submission of its Reply. Had the Board not proceeded in this manner, then the Union would have had time to file its response demonstrating why the Company's Request was unwarranted. As such, the Union respectfully requests that the Board reconsider its decision, in light of the arguments raised by the Union herein, and deny the Company's request and disregard its Reply.

A simple review of the Union's Statement in Opposition and attached exhibits<sup>1</sup> reveals that the Union has not raised any new facts or arguments which the Company "could not have anticipated," or that contradict the Regional Director's Decision ("the Decision"). In fact, the "arguments and facts" that the Company included in its Reply were outlined in the Union's prior Position Statement or included in the Decision itself. Both the Union's Position Statement and the Decision were served upon the Company. As such, the Company's claim that they could not have "anticipated" the facts and arguments which clearly appeared in prior Union filings served on the Company, is both misleading and illogical.<sup>2</sup> Additional support of this is similarly found in the Company's own Reply which largely reasserts prior arguments and cases found in its original Request for Review. In fact, nearly all of the cases cited by the Company in its Reply were similarly

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<sup>1</sup> The exhibits attached to the Union's Statement in Opposition include both the Company's and Union's position statements submitted to the Region in this case.

<sup>2</sup> The only arguable exception to this is paragraph 3 of the Company's proposed Reply which the Company itself raised as an issue in its Petition for Review. As such, it is illogical for the Company to claim it could not have anticipated that the Union would raise the issue objecting to this ex parte communication, when the Company specifically referenced it in support of its request.

cited and argued by the Company in its Request for Review.<sup>3</sup> As such, the Company's request for leave should be denied as the Union did not raise new facts or arguments that the Company could not have anticipated and addressed in its Request.

Furthermore, it appears that the Company, not the Union, has raised new arguments and facts in its Reply which were never presented to the Region or the Union. By way of example, the Company raised arguments concerning unfair labor practices and negotiations which were never raised or presented to the Region. Similarly, the Company attached exhibits which were never presented to the Region or included in its Request. Additionally, the Company cited to several cases which it did not include in its Request for Review. See, *Oakwood Healthcare, Inc.*, 348 NLRB 686, (2006); *Carpenters Dist. Council of Kansas City*, 81 NLRB 802 (1949); *Sierra Vista Hosp. Inc.*, 241 NLRB 631 (1979); and *Wolf Creek Nuclear Operating Corp.*, 365 NLRB No. 55 (2017). Section 102.67(d) prohibits the Company from raising any new issues or facts such as these which were not presented to the Regional Director on review. As such, paragraphs 2,3,5,7, and 8 should be disregarded entirely by the Board and stricken from the Reply in the event the Board does not deny CVS's request entirely. In addition to being new, many of the facts and arguments are misleading and entirely mischaracterize the Parties bargaining history and Board precedent. Although Section 102.67(d) of the Board's Rules and Regulations strictly prohibits the Company from raising any new issues or facts on review; in the event that the Board does not strike paragraphs 2,3,4,7 and 8 from consideration, the Union requests the opportunity to respond to the Company's Reply and new case law cited therein.

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<sup>3</sup> See, pages 6-12 of CVS's Request for Review citing to *Washington Post*, 254 NLRB 168 (1981), *Edison Sault Elec. Corp.*, 313 NLRB 753 (1994), *Arthur C. Logan Mem. Hosp.*, 231 NLRB 778 (1977), *St. Francis Hospital*, 282 NLRB 950 (1987), *Goddard Riverside Community Centers*, 351 NLRB 1234 (2007). Additionally, Dixie E

## **CONCLUSION**

For all of the aforementioned reasons, the Union respectfully requests that the Board reconsider its ruling and deny the Company's Request and disregard its Reply. In the alternative, the Union respectfully requests that the Board afford the Union the same and equal opportunity given to CVS by granting the Union leave to file a response to the Company's Reply.

Respectfully submitted,

/s/ Jayna Brown

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## STATEMENT OF SERVICE

I Jayna Brown, state under oath that on November 24, 2020, I caused a copy of the International Brotherhood of Teamsters Local 727 International Brotherhood Of Teamsters Local 727's Opposition To The Company's Request For Special Leave To File A Reply And Request For Reconsideration in Case 13-UC-266228 to be e-filed with Executive Secretary of the National Labor Relations Board and with Region 13 of the National Labor Relations Board.

Copies of these filings have been served upon the following individuals by email:

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